

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:09-HC-2045-BO

UNITED STATES OF AMERICA

v.

ANTON JOHNSON

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ORDER

This matter is before the Court on Respondent's Motion to Dismiss [DE 94], seeking dismissal of the pending action on the grounds that the statute violates Respondent's rights to equal protection and due process. Respondent also contends that the statute violates his right to be protected from double jeopardy, denies him the right to a fair trial due to the "clear and convincing" standard of proof, compels him to be a witness against himself in violation of the Fifth Amendment, and creates a small class of persons subject to classification under the statute.

Because Respondent makes no factual allegations in his motion to indicate that he is making an as-applied challenge to the statute, this Court interprets the Motion as a facial challenge to the statute and does not here address any as-applied challenges.


In *United States v. Timms*, the United States Court of Appeals for the Fourth Circuit held that 18 U.S.C. § 4248 does not facially violate the Equal Protection Clause or Due Process Clause of the United States Constitution. *United States v. Timms*, Nos. 11-6886 and 11-6941, 2012 WL 34477, at *8, *15 (4th Cir. Jan. 9, 2012). The Fourth Circuit has also held that 18 U.S.C. § 4248 is a civil statute, rendering Respondent's arguments regarding double jeopardy, the standard of proof, and the Fifth Amendment inapplicable.¹ *Timms*, 2012 WL 34477, at *16;

¹Of course, Respondent is entitled to invoke the Fifth Amendment to protect himself as permitted in the context of a civil case.

United States v. Comstock, 627 F.3d 513, 522 (4th Cir. 2010).

For the foregoing reasons, Respondent's Motion to Dismiss [DE 94] is DENIED.

SO ORDERED. This 10 day of January, 2012.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE